

STATE OF CALIFORNIA  
ENVIRONMENTAL PROTECTION AGENCY  
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Denova Environmental, Inc.  
2610 North Alder Avenue  
Rialto, California 92377  
EPA ID. No. CAT080022148

Gene S. Van Houten, and

Robert V. Cole.

Docket HWCA 00/01-4015  
Office of Administrative  
Hearing No. L-2001100345

PARTIAL STIPULATION AND ORDER

Health and Safety Code  
Sections 25186 and 25187

PARTIAL STIPULATION AND ORDER

The State Department of Toxic Substances Control (Department) and Denova Environmental, Inc. (Denova), and Robert V. Cole (both herein known as Settling Respondents) enter into this Partial Stipulation and Order and agree as follows:

1. A dispute exists regarding the Revocation Order (Revocation Order) and Amended Enforcement Order with Imminent and Substantial Endangerment Determination issued by the Department on September 6, 2001 (September 6, 2001, Order). (Attached as Exhibit 1.)

2. The parties wish to avoid the expense of further litigation and to ensure prompt action with regard to the matters set forth below.

3. Jurisdiction exists pursuant to Health and Safety Code sections 25186 and 25187.

4. Settling Respondents waive any right to an administrative hearing and judicial review for all matters covered by this Partial Stipulation and Order, including, without limitations, the future termination, however caused, of Denova's interim status authorization under this Partial Stipulation and Order.

5. This Partial Stipulation and Order shall constitute full settlement of the September 6, 2001, Order, with the exception of the penalty issues, which will be the subject of future negotiations and a future administrative hearing, if necessary. This Partial Stipulation and Order does not limit the Department from taking appropriate enforcement action concerning other violations. This Partial Stipulation and Order does not resolve any other pending enforcement action by other government agencies.

#### DEPARTMENT'S AGREEMENT

5.1 In consideration of the Settling Respondents' agreement to the terms below, the Department agrees to forgo its right to a hearing on the revocation portion of the September 6, 2001 Order, and to continue the hearing on the remainder of the Order that is currently set in the above matter to begin April 2, 2002, before the Office of Administrative Hearings to a date to be determined at a pre-hearing conference that will take place 90 days from the effective date of this Partial Stipulation and Order. The subject matter of the continued hearing, if necessary, will be the appropriate administrative penalty to assess against the Settling Respondents under the September 6, 2001 Order.

### SETTLING RESPONDENTS' AGREEMENT

In consideration of the above Agreement of the  
Department:

6. Settling Respondents admit that the violations alleged in the September 6, 2001, Order occurred, but Respondent Cole does not admit liability for the violations.

7. Settling Respondents shall comply with the following:

7.1. Removal of Wastes: Effective immediately, Settling Respondents shall commence removal of all hazardous wastes from the property controlled by Denova at 2610 North Alder Avenue, Rialto, California, including but not limited to the hazardous waste facility operated at the site by Denova (Facility). Within 60 days of the effective date of this Order, Settling Respondents shall submit a report documenting the removal of all hazardous waste from the property.

7.1.1. Waste Characterization: All hazardous waste shall be tested and characterized by an entity approved by the Department before it is transported offsite.

7.1.2. Operating Record: Settling Respondents shall retain in the Facility operating record all waste analyses and

waste determinations made in compliance with this Partial Stipulation and Order.

7.1.3. Authorized Facilities: All hazardous waste at the Facility shall be shipped to authorized storage, treatment or disposal facilities.

7.1.4. Manifests: Settling Respondents shall retain in the Facility operating record all hazardous waste manifests completed in compliance with this Partial Stipulation and Order.

7.1.5. September 6, 2001, Order: Settling Respondents shall comply with the requirements listed in Sections D and E in Part III, of the September 6, 2001, Order.

7.2. Closure Plan: Immediately, Settling Respondents shall commence closure of the Facility. The preceding sentence shall require the following: within 60 days of the effective date of this order, Respondent shall submit to the Department a revised Closure Plan that shall meet the requirements of California Code of Regulations, title 22, section 66265.112. The Closure Plan shall include all regulated units and solid waste management units. The Respondent shall implement the approved Closure Plan.

7.2.1. Closure Certification: Within 30 days of the effective date of this Partial Stipulation and Order, Settling

Respondents shall submit the overdue closure certification report for the Open Burn/Open Detonation Unit.

7.3. Payments: Effective immediately, Settling Respondents shall pay all penalties and interest pursuant to the prior Stipulation and Order against the respondent Denova, Docket Number HWCA 98/99-4011A, and applicable facility fees, penalties and interest.

7.4. Ownership Prohibition:

7.4.1. Respondent Cole shall not own more than five percent interest in any business that handles or manages hazardous waste, except as a generator.

7.4.2. Respondent Cole shall not take any management or decision-making role, other than as a generator, for the management of hazardous waste in any business or company.

7.4.3. Respondent Cole shall provide the Department, within 150 days of the effective date of this Partial Stipulation and Order, evidence that he has complied with this provision, including copies of sales agreements of his interest in Denova and BADJR Transportation, Inc.

7.5. Authorization Modification and Closure Notification: This Partial Stipulation and Order is deemed notification of a request to modify the Interim Status

Authorization pursuant to California Code of Regulations, title 22, section 66270.42. Effective immediately, the Interim Status Authorization for respondent Denova is modified such that the Facility may only:

7.5.1. Manage explosive hazardous wastes which fall under division 1.1 through 1.6 in 49 Code of Federal Regulations, Parts 100 to 185, section 173.53, and no other hazardous wastes;

7.5.2. Store no more than 2000 pounds net explosive weight of hazardous waste at any time; and

7.5.3. Store explosive hazardous wastes only in the four existing igloos designated #1, 2, 3, and 4.

7.5.4. The Settling Defendants irrevocably forfeit and relinquish all rights under Denova's existing Interim Status Authorization to accept, manage, or store any hazardous waste of a type or quantity or in a location not specified above.

7.5.5. Within 15 days of the effective date of this Partial Stipulation and Order, Settling Respondents shall submit to the Department a revised Part A permit application in compliance with the applicable sections of California Code of Regulations, title 22, chapter 20, article 4, which shall confirm that the existing authorization for the Facility is modified and shall confirm the intention to commence closure of all other



units at the Facility, according to the terms described above. If Settling Respondents fail to submit the revised Part A permit application within 15 days of the effective date of this Partial Stipulation and Order, the interim status authorization for the Facility terminates.

7.6. Reimbursement: If the Department or any other governmental agency removes any wastes from the Facility, Settling Respondents shall reimburse the Department or other government agency in full or pursuant to other provisions of law.

7.7. Ability to Pay: If Settling Respondents wish the Department to consider Settling Respondents' ability to pay the penalty assessed in the September 6, 2001, Order, Settling Respondents will submit, within 30 days of the effective date of the Partial Stipulation and Order, financial documents for the Department to review. These documents shall include the last three years of income tax returns and financial statements for Denova, Robert V. Cole, and the Robert V. Cole Family Trust, and any other information relevant to Settling Respondents' ability to pay.

7.7.1. If Settling Respondents fail to provide such documents, the parties agree that the matter shall be set for hearing pursuant to Paragraph 5.

7.7.2. The Department will consider compliance with this Partial Stipulation and Order in reviewing the penalty assessed in the September 6, Order.

7.8. Escrow Account: Settling Respondents shall immediately place all money received, either directly or as payment on liens or other security interests, from any sale of the Facility, the Interim Status Authorization, Denova stock or assets into an escrow account for the use of the Department to be applied toward the payment of penalties and closure of the Facility pursuant to this Partial Stipulation and Order. Settling Respondents shall have no operational control over the escrow account. If funds remain in the escrow account after certification of partial closure of the portion of the facility subject to closure under this Partial Stipulation and Order is approved by DTSC, remaining funds in the escrow account will be applied to any outstanding penalties and fees, DTSC enforcement costs, DTSC or other government cleanup or corrective action oversight costs. Any interest earned on money in the escrow account will be utilized in the same manner as any contributions to the account. Any funds remaining after compliance with the obligations of this paragraph will be paid to Respondent Cole.

## DURATION OF MODIFIED INTERIM STATUS

### 8. Termination Upon Failure to Fulfill Conditions:

Denova's modified Interim Status Authorization, as described above, shall terminate on the 150th day following the effective date of this Partial Stipulation and Order, unless all of the following in sections 8.1 to 8.8 occur by that day. The Department will not consider a revised Part A permit application to be complete unless all of the conditions in this section are met:

8.1. Revised Part A: A third party owner/operator submits a complete revised Part A permit application to the Department.

8.2. Limitations: The revised Part A permit application requests approval for the facility to manage only explosive hazardous wastes which fall under division 1.1 through 1.6 in 49 Code of Federal Regulations section 173.53, and store no more than 2000 pounds of net explosive weight hazardous waste at any time.

8.3. Explosives Storage Conditions: The revised Part A permit application requests approval for storage in the igloos only. The revised Part A permit application or any request for modification of the interim status authorization may not request

treatment of hazardous waste at the Facility, including, but not limited to: demilling, inerting, detonation, thermal treatment, and stabilization: however, the hydration of explosives as routine maintenance may be requested.

8.4. Financial Requirements: The revised Part A permit application includes a description how the prospective owner/operator will comply with the financial responsibility and financial assurance requirements for hazardous waste facilities as described in California Code of Regulations, title 22, sections 66265.140 through 66265.148.

8.5. Other Application Contents: The revised Part A permit application includes: complete information about the ownership of the property and the facility, including copies of applicable documents such as leases and sales agreements; specific provisions that the Facility employ experts in managing explosives; and an operating plan which specifies in detail how the explosive wastes will be managed at the facility. All explosive wastes shall be stored in Department of Transportation approved packaging.

8.6. EIR Payments: The third party prospective owner/operator submits with the revised Part A permit application

a cashier's check for \$50,000 for an EIR for a Part B permit application.

8.7. Closure Plan: The third party prospective owner/operator includes a closure plan with a schedule for implementation for the portion of the Facility which has not been certified closed by the Department with the revised Part A permit application.

8.7.1 Financial Responsibility: The revised Part A permit application stipulates, as a condition precedent to any approval of transfer of interim status authorization, that all financial responsibility and financial assurance mechanisms will be fully funded by the third party prospective owner/operator in advance of the transfer, and that failure to fund these mechanisms in advance shall preclude any transfer of interim status authorization. Closure cost funding shall be based on the capacity and operations of the Facility as described in the revised Part A permit application.

8.8. Failure to Comply: The prospective owner/operator agrees in the revised Part A permit application to automatic termination of the Facility interim status authorization if the Facility, under the prospective owner/operator, fails to comply with the federal or local

licensing or permitting requirements relating to the management or handling of explosives.

8.9. Termination after 180 days: If Denova's Interim Status Authorization, as modified by this Partial Stipulation and Order, does not terminate under the above sections 8 through 8.8, then it shall terminate 180 days after the effective date of this Partial Stipulation and Order, unless a transfer of interim status is approved pursuant to paragraph 8.10.

8.10. Department Approval of Transfer Possible, But Not Required: If a complete Part A permit application from a prospective third party owner/operator is submitted within 150 days of the effective date of this Partial Stipulation and Order, the Department will review and approve or deny the application within 180 days of the effective date of this Partial Stipulation and Order. Nothing in this Partial Stipulation and Order shall preclude or require Department approval of such an application. The Department will not approve such an application unless the conditions of paragraphs 7.1 through 7.4, 7.6, and 7.8 have been met. If the Department denies the application, the Interim Status Authorization for the Facility terminates.

8.11. Treatment Prohibition: Any requests for authorization of treatment must be submitted as part of the Part

B Permit Application for a Hazardous Waste Facility Permit.

Treatment shall not be authorized until issuance of the Permit.

8.12. Appeal: Nothing in this section shall preclude or prevent any third party applicant from an appeal from any decision of the Department as it relates to the third party applicant, pursuant to existing law.

#### GENERAL PROVISIONS

9.1. Submittal: All submittal from Settling Respondents pursuant to this Partial Stipulation and Order shall be sent simultaneously to:

Kit Davis, Branch Chief  
Task Force Support and Special Investigations Branch  
Department of Toxic Substances Control  
8800 Cal Center Drive  
Sacramento, California 95826-3200

and

Phillip Blum, P.E., Unit Chief  
Task Force Support and Special Investigations Branch  
1011 North Grandview Avenue  
Glendale, California 91201

and

Karen Baker, CEG, CHG, Chief  
Geology and Corrective Action Branch  
Department of Toxic Substances Control  
5796 Corporate Avenue  
Cypress, California 90630

9.2. Communications: All approvals and decisions of the Department made regarding such submittal and notifications shall be communicated to Settling Respondents in writing by a

Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Settling Respondents shall be construed to relieve Settling Respondents of its obligation to obtain such formal approvals as may be required.

9.3. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Partial Stipulation and Order fails to comply with the Partial Stipulation and Order or fails to protect public health or safety or the environment, the Department may:

a. Modify the document as deemed necessary and approve the document as modified; or

b. Return the document to Settling Respondents with recommended changes and a date by which Settling Respondents must submit to the Department a revised document incorporating the recommended changes.

c. Deny approval of the document.

9.4. Compliance with Applicable Laws: Settling Respondents shall carry out this Partial Stipulation and Order in compliance with all local, State, and federal requirements,



including but not limited to requirements to obtain permits and to assure worker safety.

9.5. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity (whether or not pursued in compliance with this Partial Stipulation and Order) are creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Settling Respondents to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Partial Stipulation and Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

9.6. Liability: Nothing in this Partial Stipulation and Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Settling Respondents, except as provided in this Partial Stipulation and Order. Notwithstanding compliance with the terms of this Partial Stipulation and Order, Settling Respondents may be required to take further actions as are necessary to protect public health or welfare or the environment.

9.7. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Partial Stipulation and Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Settling Respondents in carrying out the terms of this Partial Stipulation and Order; and conducting such tests as the Department may deem necessary. Settling Respondents shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Partial Stipulation and Order.

9.8. Sampling, Data, and Document Availability: Settling Respondents shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Settling Respondents or on Settling Respondents' behalf in any way

pertaining to work undertaken pursuant to this Partial Stipulation and Order. Settling Respondents shall allow the Department and its authorized representatives to take duplicates of any samples collected by Settling Respondents pursuant to this Partial Stipulation and Order. Settling Respondents shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Partial Stipulation and Order. All such data, reports, and other documents shall be preserved by Settling Respondents for a minimum of six years after the conclusion of all activities under this Partial Stipulation and Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Settling Respondents shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Settling Respondents shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Partial Stipulation and Order.

9.9. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Settling Respondents or related parties specified in paragraph 9.16 in carrying out

activities pursuant to this Partial Stipulation and Order, nor shall the State of California be held as a party to any contract entered into by Settling Respondents or its agents in carrying out activities pursuant to this Partial Stipulation and Order.

9.10. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Settling Respondents pursuant to this Partial Stipulation and Order are incorporated in this Partial Stipulation and Order upon approval by the Department.

9.11. Extension Requests: If Settling Respondents are unable to perform any activity or submit any document within the time required under this Partial Stipulation and Order, the Settling Respondents may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

9.12. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

9.13. Additional Enforcement Actions: By agreeing to this Partial Stipulation and Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Partial Stipulation and Order.

9.14 Amendment: This Partial Stipulation and Order may be modified by mutual agreement of the parties. Any party requesting an amendment shall show good cause why the amendment is necessary. Any agreed modifications shall be in writing, shall be signed by both parties and shall have as their effective date the date on which they are signed by DTSC.

9.15. Penalties for Noncompliance: Failure to comply with the terms of this Partial Stipulation and Order may subject Settling Respondents to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

9.16. Parties Bound: This Partial Stipulation and Order shall apply to and be binding upon Settling Respondents and its officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Partial Stipulation and Order.

9.17. Effective Date: The effective date of this Partial Stipulation and Order is the date it is signed by the Department.

9.18. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

9.19. Compliance with Waste Discharge Requirements: Settling Respondents shall comply with all applicable waste discharge requirements issued by the State Water Resources Control Board or a California Regional Water Quality Control Board.

IT IS SO STIPULATED AND AGREED.

DENOVA ENVIRONMENTAL INC.

Dated: March 29, 02

By: Robert V. Cole

Robert V. Cole  
Acting President  
Denova Environmental, Inc.

ROBERT V. COLE

Dated: March 29, 02

By: Robert V. Cole

Robert V. Cole

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

Dated: 3/29/02

By: Karen Baker for  
Kit Davis, Branch Chief  
Task Force Support and Special  
Investigations Branch  
Department of Toxic Substances  
Control

Dated: 3/29/02

By: Karen Baker  
Karen Baker, CEG, CHG, Chief  
Geology and Corrective Action  
Branch  
Department of Toxic Substances  
Control